HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Writ Petition No. 129 (S/B) of 2005

Date of Decision : 15th December, 2005

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 129 of 2005 (S/B)

Mahendra Kumar Tayal
S/o Shri Madho Ram
R/o 26, Engineers Enclave, G.M.S. Road
Dehradun, District – Dehradun
Presently posted as Executive Engineer in
Construction Division of Public Works
Department (now known as Lok Nirman Vibhag),
Chamba, District – Tehri Garhwal ... Petitioner

Versus

State of Uttaranchal through Secretary
Public Works Department
(now Known as Lok Nirman Vibhag),
Uttaranchal Secretariat, Dehradun ...Respondent

Shri Ramji Srivastava, learned Counsel for the Petitioner.
Shri B.D. Kandpal, learned Standing Counsel for the respondent.

Coram : Hon'ble Cyriac Joseph, C.J.
Hon'ble J.C. S. Rawat, J.

JUDGMENT

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition moved under Article 226 of the Constitution of India, the petitioner has sought a writ in the nature of certiorari quashing the impugned suspension order dated 29.05.2005 (Annexure-8) passed by Secretary, Public Works Section-1, Uttaranchal Government, Dehradun-Respondent.

2. The petitioner was initially appointed as a Junior Engineer in Public Works Department at Gorakhpur on 23.09.1970. Thereafter, the petitioner was promoted to the post of Assistant

Engineer on 02.06.1989 and again he was promoted to the post of Executive Engineer in the Public Works Department on 06.09.1997 and he was posted in Construction Division of P.W.D. Baizero, Distt. Pauri Garhwal. After the formation of State of Uttaranchal, the petitioner opted for the State of Uttaranchal and he remained posted there till 15.04.2000. Mr. Tara Chand Ravi was posted as Executive Engineer, Construction Division, P.W.D. Srinagar during the period when the construction of road Kandai-Kamoldi-Molakhakhal at Manjheri Ghat, Block Agastmuni and bridge over there was sanctioned in the year 1999. Sri Tara Chand Ravi, Executive Engineer was transferred from Construction Division, Public Works Department Srinagar to Public Works Department, Haridwar. The petitioner who was posted as Executive Engineer at Construction Division, Pauri was transferred to Construction Division, Srinagar vide order dated 15.04.2004 in place of Sri Tara Chand Ravi. Pursuant to the said transfer order, the petitioner joined his place of transfer at Srinagar on 29.04.2000. The petitioner was again transferred from Srinagar to Haridwar. After being relieved from Srinagar, he joined the Provincial Division of Public Works Department, Haridwar on 20.06.2001. Thus the petitioner remained posted as Executive Engineer in Construction Division of Public Works Department at Srinagar, Pauri Garhwal from 29.04.2000 to 20.06.2001 only. Shri Tara Chand Ravi Executive Engineer was again posted at Srinagar, Pauri Garhwal in place of the petitioner.

3. In the month of February, 1999 a bridge was sanctioned by the State Government over the road connecting Kandai-Kamoldi-Molakhakhal at Manjheri Ghat which was situated in block Agustmuni, Rudraprayag. The construction of the aforesaid bridge was given to the contractor Meharban Singh Rawat after inviting the tender and thereafter an agreement was also executed between the Tara Chand Ravi, the then Executive Engineer of construction Division of Public Works Department, Srinagar and the contractor Meharban Singh Rawat on 16.12.1999 for the construction of the aforesaid bridge. The construction work was to commence from 16.12.1999 and it was to be completed by 15th December, 2000 according to the aforesaid agreement. Shri Tara Chand Ravi, Executive Engineer made the payments of Rs 9,92,261/- on 12.03.2000 and Rs. 7,24,045/- on 17.03.2000 to the contractor. Sri Tara Chand Ravi, Executive Engineer again made the third running payment to the contractor on 31.03.2002.

4. The Govt. further sanctioned construction of Kandai-Kamoldi-Molakhakhal road in Agastmuni, Rudraprayag in the month of March, 1999 while Mr. Tara Chand Ravi was posted as Executive Engineer in the Division and the Govt. sanctioned the estimate of Rs. 88.13 lacks of the said road. The Govt. allotted Rs. 40 lacs for the construction of the aforementioned road for the year 2000-2001 out of the estimated cost of Rs. 88.13 lacs and Mr. Tara Chand Ravi the then Executive engineer spent Rs.

39.97 lacs. For the next year budget 2000-2001, the State Govt. sanctioned the amount of Rs. 40.30. lacs for the construction of the said road and this entire amount was spent by the petitioner for the construction of the aforesaid road. In the year 2001-2002, the petitioner further spent Rs. 4,349/- on the said road till 19.06.2001.

5. A number of complaints were received by the Govt. with regard to irregularities in the construction of the said road and bridge. The Commissioner Garhwal Division was asked to make an inquiry into the matter. He submitted the enquiry report vide his letter dated 17.02.2005 to the Additional Chief Secretary, Govt. of Uttaranchal and he found the irregularities in the construction of the above said bridge and road. The complaints were found correct. He has indicated in his letter that the excess expenditure was made against the sanctioned amount of technical sanction. The expenditure of Rs. 20.46 lacs was incurred to other works which were not provided and sanctioned in the estimates. He further found that the quality of work was not upto the mark due to which the bridge was damaged in July, 2004 just after its erection. The Commissioner Garhwal Division in his preliminary enquiry found frima-facie that the charges were grave and serious. The Commissioner recommended that disciplinary proceedings may be initiated against Sri Tara Chand Ravi, Executive Engineer, Shri M.K. Tayal, Executive Engineer-petitioner, Shri R.C. Kelkhora, Junior Engineer and

Shri Chhanga Babu, Assistant Engineer. He further recommended that the irregular expenditure incurred by the abovementioned officers may be recovered from them. He further recommended that a Committee may be constituted from under the Chairmanship of Chief Engineer, P.W.D. to assess how much amount is to be recovered from each officer for the irregularities committed by him.

6. After the receipt of report of the Commissioner, the State Govt. Took a decision to initiate the disciplinary inquiry against the officers found responsible for the irregularities in the construction of road and bride. The officers held responsible for committing irregularities in the construction of road and bridge including the petitioner were suspended on 29.05.2005 Suspension order of the petitioner dated 29.05.2005(annexure 8 to the writ petition) reveals that certain serious irregularities were found on the construction of road Kandai-Kamoldi Molkhakhal road in Patti Vachadasyum, Bolck-Agastmuni, Distt. Rudraprayag and the petitioner had spent a sum of Rs. 97.25 lacs against the technical sanction of Rs. 88.13 lacs. Out of the aforesaid amount, 20.46 lacs were spent on such works which were not sanctioned by the competent authority. It is further indicated in the said suspension order that the bridge which was erected on the said road at Manjherighat near village Vansaun was also damaged during its erection period. It is further stated in the suspension order that the disciplinary inquiry is contemplated against

his as such he is being placed under suspension forthwith.

7. The petitioner also made representation on 20.06.2005 to the Secretary, Public Construction Section-1, Uttaranchal Government, Dehradun to revoke his suspension but the respondent did not pay any heed to the grievances of the petitioner. Thereafter, the petitioner preferred this petition before this Court seeking a writ in the nature of certiorari for quashing the impugned suspension order dated 29.05.2005 (Annexure-8 to the writ petition) passed by the Secretary, Public Works Section-1, Uttaranchal.

8. The Enquiry officer was nominated on 04.07.2005 and the charges were framed against the petitioner and other erring officers. The chargesheet was served upon the petitioner on 26.08.2005 during the pendency of the petition.

9. When this writ petition came up for hearing, we directed the Standing Counsel to make available the file relating to suspension order dated 29.05.2005 (Annexure-8 to the writ petition). In compliance of the said direction, the Standing Counsel has made the file available and we have perused the said file.

10. We have heard learned counsel for the parties and perused the record.

11. It is revealed from the perusal of the department file that several complaints were received by the D.M. Rudraprayag regarding the Irregularities committed by the officers of the P.W.D. in the construction of the said road. The matter was reported by the D.M., Rudraprayag to the State Govt. Some complaints were received by the Govt. directly regarding the irregularities committed in the construction of the said road by the officers responsible fro the construction. The Chief Minister ordered the Commissioner Garhwal Division to make a detailed inquiry into the allegations made in the complaints. He went to the spot and conducted inquiry. He submitted the report to the Govt. vide letter dated 17.02.2005 as discussed above.

12. The learned counsel for the petitioner contended that during the tenure of the petitioner, no construction was made over the bridge in question and no payment was made to the contractor during his tenure, i.e., from 29.04.2000 to 20.06.2001 for the construction of the said bridge. The learned counsel further contended that the State Govt. while suspending the petitioner had not applied its mind as to whether the suspension was necessary to proceed with the departmental inquiry and whether his continuance in service during the said inquiry is undesirable or whether he would influence or prejudice the said inquiry. It was further contended that the petitioner had already been transferred from the said Construction Division, Srinagar, Distt. Pauri to Haridwar Division,

Distt. Haridwar and hence there was no question of his influencing the inquiry being held in Distt. Rudraprayag. The learned Standing Counsel refuted the contentions.

13. The petitioner also averred in para 7 of his petition that the petitioner during his tenure as Executive Engineer, Construction Division, Srinagar from 29.04.2000 to 2001 did not make any payment to the Contractor for the construction of the said bridge and the petitioner further averred that during his tenure no construction was made in connection with the bridge. The respondents did not make any specific admission or denial of this averment in their counter affidavit. So on 14.09.2005, we directed respondent No. 1 to file an additional counter affidavit stating whether the abovementioned averments in the petition are true or not. Pursuant to the said direction, the respondent No. 1 filed an additional counter affidavit or Dr. S.S. Sandhu, Secretary of the Deptt. on 20.09.2005. It is admitted by the respondent that the tenure of the petitioner in the Construction Division, Srinagar as an Executive Engineer was from 29.04.2000 to 20.06.2001. It is further averred in the affidavit that the following expenditures were made by the petitioner during his tenure on the above mentioned road.

1.	Compensation	:Rs. 5,11,303.00
2.	Hill side cutting	:Rs. 25,15,195.00
3.	Retaining walls & scupper/ catch pit construction	:Rs. 36,902.00
4.	Maintenance during	

	Construction	:Rs.	20,930,00
5.	Expenditure on Mech. Works	:Rs.	1,19,695.00
6.	Miscellaneous works	:Rs.	2,36,916.00
7.	Expenditure of other roads	:Rs.	3,83,855.00
8.	P.O.L.	:Rs.	37,694.00
	Total	:Rs.	38,62,490.00

It is pertinent to mention here that petitioner has also admitted in para 11 of the petition that the Govt. sanctioned a sum of Rs. 40.30 lacs in the financial year 2000-2001 for the construction of Knadai-Kamoldi-Molakhakhal road in question and he spent the entire said amount on the road and he further spent a sum of Rs. 4,349/- in the year 2001-2002. It is clear from the record that the petitioner only spent at about a sum of Rs. 40.35 lacs during his tenure in the construction or road and bridge. However, the suspension order of the petitioner states that he spent a sum of Rs. 97.25 lacs against the technical sanction of Rs. 88.13 lacs.

14. It cannot be disputed that State Govt. being the appointing authority was competent to suspend the petitioner pending the disciplinary action. The State Govt./ Disciplinary authority had the option to place him under suspension pending inquiry or to transfer him to another place. An employee can be suspended only when the disciplinary authority is of the opinion that it is necessary in the public interest to place him under suspension in order to maintain the discipline in service and keep up the morale of the honest and dutiful employees or to inspire confidence and trust in the minds of the public or to

protect the image of the Department. Disciplinary authority while suspending an employee has to consider the nature of the allegations and the nature of the post held by him. An order of suspension visits the employees with serious evil consequences, monetary loss and loss of reputation. It is not necessary to place the employee under suspension in every case where the disciplinary proceedings are initiated. It has to be considered by the State Govt. whether the continuance of the employee in service at any other place in the State is likely to influence or prejudice the inquiry and disciplinary proceedings. Sometimes Govt. may feel that the nature of the irregularities alleged against the delinquent official are of serious nature or that he is holding such a sensitive post and hence his continuance in the service during the disciplinary proceedings is undesirable. If transfer will be sufficient to ensure proper and fair disciplinary inquiry, the State Govt. may only transfer the employee and may not place him under suspension. The State Govt. should consider whether transfer or suspension is necessary in the given circumstances. The State Govt. has the discretion in the matter and the State Govt. has to exercise its discretion only after considering the relevant aspects of the matter fairly and judiciously and not arbitrarily. When the suspension order is challenged before the court, the disciplinary authority is bound to show that he had arrived at a satisfaction that suspension was necessary to proceed with the departmental inquiry and the continuance of the employee in service

during the inquiry is undesirable and would influence or prejudice the inquiry. A proper exercise of the discretion by the State Govt. cannot be interfered with by the court. If the State Govt. fails to show that it had properly considered the matter and was satisfied that suspension itself was required, the order suspension is liable to be held to be illegal and arbitrary and is liable to be quashed. It may not be necessary for the State Govt. to give detailed reasons in the order to suspend an employee, but the order of the State Govt. or the relevant file should reflect that the competent authority after applying its mind to all the relevant aspects of the matter had exercised its discretion properly, fairly and judiciously and not arbitrarily. The law on the subject has been laid down by a Division Bench of this Court in **S.K. Goel Vs. State of Uttaranchal and another [2005 (2) U.D., 11].** For convenience paragraph 4 of the said judgment is extracted hereunder:-

"It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. The continuance of the employees in the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings. Sometimes, in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. In the first case, the proper conduct of enquiry and

disciplinary proceedings can be ensured by a mere transfer or the officer. Only in the second case the officer need be placed under suspension. Hence, it is incumbent upon the disciplinary authority to consider whether a transfer of the officer will be sufficient or whether suspension itself is required. Only when the disciplinary authority is satisfied that suspension itself is required, an officer can be placed under suspension. If and when the suspension is questioned in a Court of law, the disciplinary authority is bound to show that he had arrived at a satisfaction that a mere transfer was not sufficient and that suspension itself was required. If the disciplinary authority fails to show that he had properly considered the matter and was satisfied that suspension itself was required, the order of suspension is liable to be declared illegal and arbitrary and quashed on that basis. It should be remembered that though suspension is not a punishment, it visits the employee with serious civil consequences and loss of reputation and prestige. Hence, an order of suspension should not be passed lightly, casually or without proper application of mind."

15. In the instant case the impugned order or the relevant file did not disclose or reflect that the authority concerned had applied its mind to all the relevant aspects and exercised its discretion properly, fairly and bonafide. The perusal of the file does not reflect that the disciplinary authority had properly considered whether the transfer was

sufficient or suspension itself would be required. In the impugned order, it has been stated that Sri M.K. Tayal had spent a sum of Rs. 97.25 lacs against the technical sanction of Rs. 88.13 lacs and out of the aforesaid amount Rs. 20.46 lacs were spent on such works which were not sanctioned by the competent authority. But in the additional counter affidavit of respondent No.1, he has admitted that the petitioner remained posted in the construction Division, Srinagar as an Executive Engineer only from 29.04.2000 to 20.06.2001 and that the petitioner incurred only and expenditure of Rs. 38.62 lacs. This itself shows that while passing the suspension order, the disciplinary authority had not applied his mind to the relevant aspects of the matter. From the perusal of the material placed on record before us, we are not satisfied that the reinstatement of the petitioner in service at this stage will in any way influence the inquiry or prejudice the disciplinary proceedings or that the continuance of the petitioner in service is undesirable. The alleged irregularities were committed when the petitioner had been working as an Executive Engineer in Construction Division, Srinagar. At the time of suspension, the petitioner was working as an Executive Engineer in Haridwar. If the Govt. considers that the petitioner's presence even in Haridwar will influence or prejudice the inquiry, it will be open to the Govt. to post him in any other place where the State Govt. likes. We do not find any valid reason to keep the petitioner under suspension any more.

16. In view of the above discussions, the impugned suspension order dated 29.05.2005 (Annexure-8) passed by Secretary, Public Works Section-1, Uttaranchal Government, Dehradun is quashed. Suspension of the petitioner stands revoked with immediate effect. The Secretary to Govt. shall issue necessary orders immediately posting the petitioner at any place of its choice. The petitioner shall immediately report for duty before the Chief Engineer concerned.

18. The writ petition is disposed of as above.

(J.C.S. Rawat, J.) **(Cyriac Joseph, C.J.)**

15-12-2005.
Shiv